

[3] On 6 August 2025, following an urgent hearing with the parties, I granted the application for an interim injunction, preventing the respondent from conducting a process proposing to remove Mr Jenner from office under cl 24.2 of its constitution until further order of the Court. Reasons were given in a judgment issued on 11 August 2025.¹

[4] The substantive proceedings were heard on 30 September and 1 October 2025.

[5] On 16 October 2025, CANZ filed a memorandum seeking to file further submissions and attached the proposed submissions. At my direction, the registry has not provided those submissions to me. Mr Jenner opposed the filing of those submissions.

[6] On 22 October 2025, counsel for CANZ applied to the Court for leave to file supplementary submissions on whether a pre-process under cl 11 and sch 1 of the constitution might be required before any steps could be taken in cl 24.2(a); and on the application of cl 6.1 of sch 1 of the constitution to the application of cl 24.2(a).

[7] A summary of the key grounds in support of the application included that:

- (a) it is in the overall interests of justice to grant the application;
- (b) the delay in making the application was due to the illness and injury of the applicant's lawyers;
- (c) the application of cl 6.1 was not pleaded but expounded upon by counsel for Mr Jenner in oral submissions;
- (d) counsel for CANZ needed to seek instructions before making the additional submissions;
- (e) there is little or no prejudice or hardship to Mr Jenner;

¹ *Jenner v Corrections Assoc of New Zealand Inc* [2025] NZEmpC 168.

- (f) the judgment has yet to be finalised or published and consideration of the points will not be overly onerous or cause further delay; and
- (g) guidance from the Court on the issues will be relevant to future matters.

[8] A brief affidavit was filed by Mr du Plessis in support, which essentially made brief submissions on the points themselves, but also explained the delay in making this application. While CANZ had advised its lawyers that it thought it would be beneficial to provide extra information to the Court on these points on 6 October 2025, there had been a delay due to the illness of counsel. CANZ considered it important for the Court to consider the issues now, given the limited opportunity to respond to questions from the Court during the hearing.

[9] On 23 October 2025, Mr Jenner filed a notice of opposition which, for efficiency, also incorporated submissions in opposition to the application. Mr O’Flaherty, counsel for Mr Jenner, opposes the application on the grounds that the two issues were discussed at both the interim and substantive hearings and dealt with in both sets of CANZ’s written submissions. He says that counsel for CANZ had a full opportunity to make submissions at the time of the hearing, including having the benefit of a break overnight before concluding their submissions in defence of the applications. He submits that there is nothing new in what CANZ now wants to say and no exceptional circumstances have been identified that would justify allowing further submissions after the Court has already heard the matter. He submits that the union is simply seeking a third attempt at stating its position.

[10] Mr Jenner’s affidavit in opposition to the application records his concern at the cost and potential delay caused by the application, as well as what he perceives to be the attempt by CANZ to have another opportunity to state its position.

[11] CANZ filed submissions in reply on 24 October 2025.

[12] Given that the parties have indicated the need for a judgment in the substantive matter by 3 November 2025, it is necessary to deal with this application urgently.

Legal principles

[13] The Court's practice directions outline the approach to final submissions. Practice direction four states:²

4. Final submissions at hearing

- 1) Except in exceptional circumstances, for which the leave of the Court will be required, parties' final submissions in all cases will be given to the Court immediately following the conclusion of evidence or otherwise at the closure of the parties' cases.

...

[14] Additionally, where the Employment Court Regulations 2000 do not provide for a form of procedure, it is appropriate to look to the provisions of the High Court Rules 2016. Rule 11.8A deals with the current circumstances.

11.8A Further submissions after end of hearing but before judgment

- (1) This rule applies after a proceeding or an application has been heard but before judgment has been given.
- (2) A party may file a memorandum seeking leave to make further submissions.
- (3) The Judge responsible for the judgment may grant leave to a party to make further submissions.

[15] Exceptional circumstances that warrant accepting further submissions may include a new argument that could not be anticipated by the date of the hearing or matters which have arisen since the hearing that would change the outcome of the decision.³ However, further submissions which merely seek to highlight matters before the Court will not be accepted.⁴

[16] Accordingly, the issue to be considered is whether exceptional circumstances exist that would justify a departure from the normal rule that final submissions be given immediately following the end of the hearing.

² "Employment Court of New Zealand: "Practice Directions" (1 September 2024) <www.employmentcourt.govt.nz> at No 4.

³ See for example *Body Corporate 172108 v Flat Bush Finance Ltd* [2020] NZHC 3135 at [68]–[76].

⁴ See for example *Prajapati v Immigration and Protection Tribunal* [2020] NZHC 2785 at [65].

Analysis

[17] The application and submissions made by Mr Roberts on behalf of the respondent do not amount to exceptional circumstances – nor do they purport to do so.

[18] Mr Roberts has suggested that the Court’s practice direction may inappropriately fetter its discretion and that the application of ss 189 and 221 of the Employment Relations Act 2000 has the effect that broader grounds may be looked at when considering the application.⁵

[19] I agree that it is not a linear exercise, looking purely at exceptional circumstances; the interests of justice must prevail. However, where there are no exceptional circumstances, it is unlikely to be in the interests of justice to allow submissions after the close of the case.

[20] The two issues on which the respondent seeks to make further submissions are not new.

[21] The interpretation of cl 24.2(a), in particular having regard to the impact of cl 11 and sch 1 of the constitution was a matter of discussion between the Court and both counsel in the injunction hearing, and also in the substantive hearing. It is also dealt with by both parties in their written submissions. They have both had a full opportunity to put forward any submissions on that point. There are no exceptional circumstances that support a further opportunity being allowed.

[22] The second issue – that is, the relevance of cl 6.1 of sch 1 of the constitution to the application of cl 24.2(a) when dealing with allegations of bias and predetermination – is also not new. The issue of bias was a matter put forward by Mr Jenner at the outset. The constitution is CANZ’s own document. It is not unreasonable to assume that it and its counsel were familiar with cl 6.1 of sch 1. The extent to which it wanted to make any submissions on the relevance of that clause in relation to the interpretation or operation of cl 24.2(a) was a matter for counsel at the time. In any

⁵ Relying on *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 80.

case, during the hearing, in answer to the Court's questions, counsel for CANZ discussed with the Court the applicability and relevance of cl 6.1.

[23] Further, as noted by counsel for Mr Jenner, counsel for CANZ had the opportunity to begin his oral submissions and then have the period overnight to deal with any matters that had arisen during the day, including taking instructions in relation to those matters.

[24] I do not consider that there are any exceptional circumstances in relation to the two issues raised. The issues are not new. Counsel has already made submissions in relation to them, and was given ample opportunity to do so during the hearing.

[25] Standing back and considering the respondent's application as a whole, I find that allowing it to make new legal arguments after the case has been heard is not in the interests of justice. Equity and good conscience do not justify reopening the submissions at this late stage or in these circumstances.

Outcome

[26] The respondent has not identified any exceptional circumstances that would justify further submissions being filed, and I consider that it is not in the interests of justice for such leave to be granted.

[27] The respondent's application for leave to file further submissions is declined.

[28] Costs are reserved.

Kathryn Beck
Judge

Judgment signed at 9 am on 31 October 2025